APPENDIX I

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

SUZANNE G. OGLE,

Plaintiff and Appellant,

v.

V. A. HEIM, as County Auditor-Controller, etc.,

Defendant and Respondent;

JOEL E. OGLE,

Real Party in Interest and Respondent.

L.A. 29510
FILED
JULY 10, 1968
WILLIAM I. SULLIVAN, *Clerk*

By.....
S. F. Deputy

This is an appeal by the plaintiff, Suzanne G. Ogle, from a judgment of the Superior Court of Orange County denying a writ of mandate to compel the Auditor-Controller of Orange County to honor the execution of a judgment for child support from retirement benefits of the judgment debtor. We have concluded that the judgment must be affirmed.

Suzanne Ogle divorced Joel E. Ogle in July 1963 and was awarded custody of their two minor children. Joel was ordered to pay the sum of $150 per month for each child's support, that is, a total sum of $300 monthly. Joel is a retired member of the Orange County Employees'

Retirement System receiving a retirement allowance of $222-225 monthly. In September 1963 Joel became physically disabled and has since been unable to work.

Suzanne caused an abstract of judgment and affidavit to be filed pursuant to the provisions of section 710 of the Code of Civil Procedure for the purpose of executing on Joel's retirement allowance, alleging that he was delinquent in child support payments to the extent of $1,315.43. The defendant auditor-controller refused to pay any portion of the retirement benefits into court on the ground that they were exempt from execution. Suzanne sought mandate, and Joel filed a claim of exemption.

Pensions of public employees are exempted by statute from the claims of their creditors. Section 690.23 of the Code of Civil Procedure provides that "All money held, controlled or in process of distribution by the State . . . or other political subdivision . . . derived from the contributions by the State . . . or other political subdivision . . . or by any officer or employee thereof for retirement or pension purposes . . . *are exempt from attachment or execution.*" (Emphasis added.) Section 690.22, the companion to section 690.23, extends exemption to payments after receipt by a resident pensioner. In addition, Government Code section 31452 provides that pensions of retired employees *of a county* "are not subject to execution, garnishment, attachment, *or any other process of court whatsoever, and are unassignable . . .*"
(Emphasis added.)

Numerous other pensions to retired employees of particular governmental entities are also insulated by spe-

cial legislation.[1] Not one of the pension exemption statutes contains any suggestion that dependents are to be treated differently from other creditors. However, on the basis of the frequently repeated formula that the purpose of exemption statutes is to save debtors and their families from want by reason of misfortune or improvidence (e.g., Estate of Crosby, 2 Cal. 2d 470, 473; Bailey v. Superior Court, 215 Cal. 548, 554; Holmes v. Marshall, 145 Cal. 777, 778-779), plaintiff argues that no exemption statutes should bar a claim for child support. More specifically, she urges that the purpose of the statutes is to allow protection to the family as well as to the debtor and that the debtor should not be allowed to use the statutes to protect himself against his family.

Even if this analysis of statutory purpose were precise, it would not be helpful. "The general rule is that a court is not authorized in the construction of a statute, to create exceptions not specifically made. If the statute announces a general rule and makes no exception thereto, the courts can make none." (Stockton Theatres, Inc. v. Palermo, 47 Cal. 2d 469, 476; Vallerga v. Dept. Alcoholic Bev. Control, 53 Cal.2d 313, 318; Wisdom v. Eagle Star Ins. Co., 211 Cal.App.2d 602, 605; People v. Pacific Guano Co., 55 Cal.App.2d 845, 848; see 2 Suther-

[1] E.g., Education Code, section 14407 (Teachers' Retirement Fund); Government Code, section 9359.3 (Legislators' Retirement Fund); Government Code, section 21201 (State Employees' Retirement Fund); Government Code section 32210 (Fire Service Retirement Fund); Public Utilities Code, section 12337 (Municipal Utility District Retirement Fund); Public Utilities Code, section 25337 (Transit District Retirement Funds). See also, 5 U.S.C.A. § 8346 (a) (Federal Employees Retirement Benefits); 42 U.S.C.A. § 407 (Social Security Benefits); Welfare and Institutions Code, section 11002 (Aid and Medical Assistance Benefits). See generally, Committee on Debtor and Creditor, *Modernization of Statutory Exemptions* (1967) 42 State Bar J. 869.

land, Statutory Construction (1943) § 4701 et seq., p. 333 et seq.) The application of the general rule to the pension exemption was recognized in In re Smallbone, 16 Cal.2d 532, 534, where this court said: "There is no exception in the exemption laws which would authorize the satisfaction of an alimony judgment out of exempt property belonging to the husband and it is not the province of the courts to read such an exception into the law, . . ." This case held that although a husband cannot be forced to satisfy his support obligation from exempt pension moneys, he can be held in contempt where the pension moneys evidence an ability to pay. *Smallbone* was followed in Howard v. Howard, 166 Cal.App.2d 386, where plaintiff sought to satisfy a child support order by garnishing her former husband's disability retirement payments from the Los Angeles Fire Department. The court observed that Code of Civil Procedure section 690 provides that "The property mentioned in Sections 690.1 to 690.25, inclusive, this code, is *exempt* from execution or attachment, *except as therein otherwise specially provided*, . . ." (Emphasis added.) No exception to the pension exemption was found, and the court concluded that the pension was exempt from levy and that plaintiff should enforce her claim by other remedies. In Conaway v. Conaway, 218 Cal.App.2d 427, 429, plaintiff appealed from an order denying appointment of a receiver to receive her husband's Air Force retirement checks and apply them to a judgment for accrued alimony. The court held the retirement checks exempt under section 690.22 and affirmed the Judgment, but added: "Exemption from execution does not equate with a refusal to support from funds available, though exempt. Immunity does not necessarily imply impunity."

California exemption statutes have not, as a class, been construed to contain an exception for dependents.[2] The Legislature has repeatedly enacted exemption statutes which make no provision for the special circumstances which pertain upon dissolution of a family; some legislation directly indicates that no special treatment is desired. For example, in its 1959 addition of section 674.5 to the Code of Civil Procedure, the Legislature provided that a judgment for alimony or child support, when recorded, "shall from such recording become a lien upon all real property of the judgment debtor, *not exempt from execution*, . . ." (Emphasis added.) The italicized portion cautiously assures that dependents shall have the same rights in exempt property as other judgment creditors. (See Code Civ. Proc., § 674.)

The only exemption under which dependents have been accorded special treatment is section 690.11 of the Code of Civil Procedure. Section 690.11 renders one-half of a debtor's wages earned within the prior 30 days ex-

[2] Several cases opine in dictum the desirability of exceptions to the exemption statutes for the support of dependents only to find the proposed exception unnecessary on the facts presented. In Willen v. Willen, 121 Cal.App. 351, the court held that a levy upon the proceeds of disability insurance benefits (exempt under section 690.19) was equivalent to foreclosure where a statute permitted foreclosure of liens on exempt property and where the wife had a lien on the community property policies. (Accord, Remley v. Remley, 49 Cal.App. 489 (homestead).) In Yager v. Yager, 7 Cal.2d 213, the court intimated a willingness to create an exception to the homestead exemption in an appropriate case, but refused to do so on the facts of that case. In Bailey v. Superior Court, *supra*, 215 Cal. 548, the court used language favorable to the creation of an exemption but held that where the defendent offered no evidence that certain farm utensils were of a value to be within the exemption of section 690.3, they could be considered in determining wilfullness of nonsupport. Gaskins v. Security-First Nat. Bank, 30 Cal.App.2d 409, involved the interpretation of a federal statute. Although this was seemingly a case within the provisions of section 690.22, that section was not mentioned.

empt, and allows total exemption "if necessary for the *use of the debtor's family.*" (Emphasis added.) Claims of dependents are not barred by the exemption of section 690.11 (Bruton v. Tearle, 7 Cal.2d 48, 53; McIntosh v. McIntosh, 209 Cal.App.2d 374; Henry v. Henry, 182 Cal.App.2d 707; Rankins v. Rankins, 52 Cal.App.2d 231.)[3] The language of section 690.11 invited the creation of an exception by expressly referencing the needs of the debtor's family as a criterion for exemption. By contrast, the pension exception statutes contain no similar criterion and refute any such exception. The peculiar development of the wage exemption is therefore inapposite, despite certain parallels between wages and pensions.

Plaintiff offers cases from other jurisdictions which allow dependents to reach pensions as representative of what she claims is the majority and better rule. We have carefully examined these cases; they are not impressive. Only three jurisdictions — New York (e.g., Hodson v. New York City Employees' R. System (App.Div. 1935) 278 N.Y.S. 16; Legler v. Legler (App.Div. 1935) 278 N.Y.S. 804; Monck v. Monck (App.Div. 1918) 172 N.Y.S. 401; Zwingmann v. Zwingmann (App. Div. 1912) 134 N.Y.S. 1077; Albert v. Albert (Sup.Ct. 1960) 199 N.Y.S.2d 766), New Jersey (Fischer v. Fischer (N.J. 953) 98 A.2d 568), and Wisconsin (Courtney v. Courtney (Wis. 1947) 29 N.W.2d 759; Saunders v. Saunders (Wis. 1943) 9 N.W.2d 629) — have held that state pension exemption statutes are in-

[3] Avilla v. Avilla, 81 Cal.App.2d 210, involved applications of section 690.11, a federal statute, and section 690.10 which exempts seamen's wages. Although the basis of the exception permitted is unclear, the seamen's statute allows the debtor $300, and an exemption in this amount was granted by the court.

applicable to a claim for alimony or child support where the state statute seems absolute on its face and contains no language indicating an exception for dependents. A fourth jurisdiction, Michigan, has held that a municipal exemption ordinance could not bar dependents. (McDonald v. McDonald (Mich. 1958) 88 N.W.2d 398.)[4]

These cases are of little aid because they would find exceptions where none exist. Moreover, we are not persuaded that the blanket exceptions which they effect would be warranted by the public policy of this state. New York has allowed dependents to prevail against public and private pensions in cases involving separation, abandonment, or divorce, and in cases seeking cur-

[4] Other decisions which have allowed claims of dependents against pensions are not germane because they do not involve statutes comparable to those in issue here. A number of cases involving federal statutes relating to veterans benefits hold that alimony and child support are not claims of "creditors" within the meaning of the statutes. (E.g., Gaskins v. Security-First Nat. Bank, *supra*, 30 Cal. App.2d 409; Hannah v. Hannah (Ga. 1940) 11 S.E.2d 779; Stirgus v. Stirgus (Miss. 1935) 160 So. 285; Dillard v. Dillard (Tex.Civ.App. 1960) 341 S.W. 2d 668. See also, Szymanski v. Szymanski (Iowa 1920) 176 N.W. 806; James v. James (Ohio Ct.App. 1942) 44 N.E.2d 368. But see, In re Irish (Idaho 1932) 9 P.2d 501; Riker v. Riker (Sup.Ct. 1936) 289 N.Y.S. 835; Commonwealth v. Berfield (Pa.Super. Ct. 1947) 51 A.2d 523; Brewer v. Brewer (Tenn.Ct.App. 1933) 84 S.W.2d 1022.)

Dependents' claims against pensions unprotected by any statute are common. The cases may involve such diverse questions as the efficacy of a nonassignment clause in a private commercial pension (e.g., Kendrick v. Kendrick (Ala. 1960) 124 So.2d 78; Thiel v. Thiel (N.J. 1964) 197 A.2d 354; but see, Thomas v. Thomas, 192 Cal.App.2d 771; Hoffman v. Hoffman (N.J. 1951) 84 A.2d 441), or the effect of sovereign immunity (Montgomery v. Montgomery (C.A.D.C. 1946) 153 F.2d 634).

At least two states provide by statute that no exemption is effective against a claim for alimony. (Tenn. Code, Vol. 5, § 26-210; Vernon's Annot.Mo.Stat., § 452.140; see Pugh v. St. Louis Police Relief Assn. (Mo.Ct.App. 1944) 179 S.W.2d 927; but see, Ferneau v. Armour and Co. (Mo.Ct.App. 1957) 303 S.W.2d 161, 168-169 (exception does not apply to child support).)

rent pension payments, the pension fund from which the payments are disbursed, or an employee's future interest in the fund. (E.g., La Hondere v. La Hondere (App. Div. 1939) 9 N.Y.S.2d 918; Fox v. Fox (App.Div. 1950) 93 N.Y.S.2d 620; Jackson v. Jackson (Sup.Ct. 1948) 86 N.Y.S.2d 516; Anonymous v. Anonymous (Family Ct. 1963) 246 N.Y.S.2d 93; cases cited, *supra.)* The decisions go far beyond the simple holding that dependents may garner the pension payments which plaintiff seeks here, and such great liberality would appear to be unwise. Allowing forced sales of pensions prior to the time they become payable results in loss to the employee and cost to the pension system disproporationate to any benefit to creditors. (Cf. Note, *Legal Problems of Private Pension Plans* (1957) 70 Harv.L.Rev. 490, 499.) Waste, confusion, and disparity of treatment are potentially incident to a legislatively unlimited exception. Such would be destructive of socially invaluable methods of providing for old-age security through programs of enforced savings and investment. (See 2 Assembly Interim Committee Report No. 11, Industrial Relations (1965-1967) (Pension Plans and Public Policy in California).)

Further, many of the foreign cases fail to recognize that exemptions are not the only legal armor protecting pensions. Pension administrators too have a substantial and abiding interest in maintaining the integrity of their funds and assuring eventual security against profligacy and misfortune. To protect participants' and employers' interests, pension rights are typically made nonassignable. As noted, Government Code section 31452 renders the pension which plaintiff seeks not only exempt but also "unassignable," thereby restricting

voluntary as well as involuntary alienation. Nonassignability has been validated by statute and decision, and independently of exemption laws, operates as a defense against creditors.[5] In Thomas v. Thomas, *supra*, 192 Cal.App.2d 771, for example, plaintiff was blocked from enforcing an alimony judgment against a private, unfunded pension system of which her former husband was a beneficiary. The court reasoned that since nonassignment clauses were effective in pension trusts and pension annuity contracts, they must also be effective in other contractual pension plans.

It may be noted that dependents do have remedies against the recalcitrant, of which contempt is the most efficacious. Because section 690.22 does not apply to nonresidents, pensioners against whom contempt is unavailable may nevertheless be subject to the Uniform Reciprocal Enforcement of Support Act. (Code Civ. Proc.,

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[5] Statutes exempting particular pensions, like Government Code, section 31452, which deals with pensions of county employees, may provide that pensions are "unassignable."

In addition to statutes relating to particular pensions, a number of statutes affect particular funding devices, public or private. For example, Insurance Code section 10129.5 provides that the transferability provisions of the Insurance Code are inapplicable to benefits under annuity contracts qualified under Internal Revenue Code section 401 (g). Insurance Code section 10129 provides that group and individual policies may be unassignable. (See also, Ins. Code, § 10213 (group life insurance proceeds exempt); Code Civ. Proc. § 690.19 (certain life insurance proceeds exempt); Ins. Code, § 101; Note, 28 A.L.R.2d 1213; Detroit Greyhound Emp. Fed. Cr. U. v. Aetna Life Ins. Co. (Mich. Ct. App. 1967) 151 N.W.2d 852.)

Although the validity of spendthrift retirement trusts has not been decided in California, spendthrift trusts as such, are valid. (Civ. Code, §§859, 867; see Lowe v. Jones (Pa. 1964) 200 A.2d 880; Hyland, *Is the Beneficiary of a Spendthrift Retirement Trust a Fox That can be Cornered?* (1952) 27 L.A.Bar Bull. 441.) Spendthrift trusts effectively bar dependents as well as other creditors. (Canfield v. Security-First Nat. Bank, 13 Cal.2d 1; Smith v. Smith, 51 Cal.App.2d 29; San Diego Trust etc. Bank v. Heustis, 121 Cal.App. 675.)

§ 1650 et seq.) If dependents are to have further remedies, a consistently hostile battery of statutes will have to be circumvented and parity of treatment among pensioners regardless of vagaries of funding should be effected. In view of the present clarity of statute and decisional law, the burden of change, if any, and its extent should be on the Legislature and not this court.

The judgment is affirmed.

PETERS, J.

WE CONCUR:
TRAYNOR, C. J.
McCOMB, J.
TOBRINER, J.
MOSK, J.
BURKE, J.
SULLIVAN, J.

APPENDIX II

COURT OF APPEAL, FOURTH DISTRICT
SECOND DIVISION
STATE OF CALIFORNIA

SUZANNE G. OGLE,
Plaintiff and Appellant,

vs.

V. A. HEIM, Auditor-Controller of the County of Orange, State of California,
Respondent.

No. 4 Civil 8343

OPINION

APPEAL from a judgment of the Superior Court of Orange County. William S. Lee, Judge. Affirmed.

Proceeding in mandamus to compel the auditor-controller of the County of Orange to honor the execution of a judgment for child support from retirement benefits of the judgment debtor. Judgment denying writ affirmed.

Eric A. Rose for Petitioner and Appellant.

Adrian Kuyper, County Counsel, and James S. Okazaki, Deputy County Counsel, for Respondent.

No appearance by Real Party in Interest Joel E. Ogle.

This is an appeal from a judgment denying a writ of mandate based upon a petition filed by Suzanne G. Ogle, wherein it was alleged: That the petitioner was the defendant and cross-complainant in an action for divorce filed in the Orange County Superior Court; that the

court issued an order in the divorce proceeding awarding her the care, custody and control of the two minor children of petitioner and the real party in interest herein, Joel E. Ogle; that the said Joel E. Ogle was ordered to pay the petitioner the sum of $150.00 per month per child, comprising the total sum of $300.00 monthly for the care, maintenance and support of said minor children; that Joel E. Ogle was formerly county counsel of Orange County, has retired, and receives a retirement allowance of $222-225 per month as a member of the Orange County Employees' Retirement System; that the father failed to pay child support pursuant to said order, and that petitioner consequently caused an abstract of judgment and affidavit to be filed pursuant to the provisions of section 710 of the Code of Civil Procedure for the purpose of executing on the retirement allowance of the father for delinquent child support in the sum of $1,315.43; that the respondent-auditor refused to pay any portion of the retirement benefits into court pursuant to said levy on the ground that the retirement benefits were exempt from garnishment; and that the county auditor should be compelled to honor the levy.

The petition and the answers filed by the county and real party in interest contain the following supplemental information: Joel E. Ogle became a member of the Orange County Employees' Retirement System on January 1, 1945, when the system was initially adopted by the County of Orange; he and petitioner herein were married on February 24, 1954; Joel retired from government service on March 1, 1960, and commenced to receive a retirement allowance which presently amounts to $222-$225 monthly; Joel and Suzanne were divorced on July 16, 1963; Joel was ordered to pay child support

as herein reflected; in September 1963 Joel became physically disabled and has been unable to be gainfully employed since that time; Joel was unable to make the child support payments as ordered by the court, which culminated in the issuance of the abstract of judgment in the sum of $1,315.43.

The sole issue to be determined on appeal is whether the retirement benefits of the former county counsel are subject to execution by his divorced wife for the purpose of enforcing child support payments owed by him pursuant to court order.

At common law, a judgment creditor could not levy a garnishment upon a public entity such as a county. *(Lay v. Hammond,* 212 Cal. 665, 667; *Ruperich v. Baehr,* 142 Cal. 190, 196; *Weiser v. Payne,* 110 Cal. App. 378, 380.) Section 710 of the Code of Civil Procedure is a modification of the law of sovereign immunity whereby the Legislature has provided a special method for the subjection of debts due from such entities to the lien of a judgment. *(Irilarry v. City of San Diego,* 186 Cal. 535, 537; *Vaughn v. Condon,* 52 Cal. App. 713, 714.) In applying section 710 of the Code of Civil Procedure, California courts have been cognizant that the procedures prescribed therein constitute a relinquishment of sovereignty, and have followed a policy of strict interpretation of the section. (See *Lay v. Hammond, supra, at* 668-669; *Weiser v. Payne, supra.)*

Section 31452 of the Government Code provides with respect to pensions, annuities, and retirement allowances as follows:

> "... They are not subject to execution, garnishment, attachment, or any other process of court whatsoever, and are unassignable ..."

Petitioner herein maintains that the exemption statute, as embodied in section 31452 of the Government Code, should not be available to a father who is endeavoring to avoid the obligation of supporting his minor children.

However, there is no exception in the exemption laws which authorizes the satisfaction of an *alimony* judgment out of exempt property belonging to the husband, and the husband's pension is exempt from execution for satisfaction of an alimony judgment. *(In re Smallbone*, 16 Cal. 2d 532, 534; *Thomas v. Thomas*, 192 Cal. App. 2d 771, 784.) Moreover, the precise issue presented herein has been previously decided under exemption statutes similar in language and scope to section 31452 of the Government Code. Monthly disability payments received by a city fireman have been expressly held to be exempt from execution under sections 690.22 and 690.23 of the Code of Civil Procedure for *child support* payments owed by the fireman. *(Howard v. Howard*, 166 Cal. App. 2d 386, 387.)

Petitioner relies on multiple foreign decisions which hold in effect that wages, disability and retirement benefits are not exempt from garnishment or execution where the judgment is based on an alimony or child support award. (See *Kendrick v. Kendrick* (1960, Ala.) 124 So. 2d 78; *Montgomery v. Montgomery* (1946) 80 App. DC 334 [153 F. 2d 634] *Zwingmann v. Zwingmann* (1912) 150 App. Div. 358 [134 N.Y. Supp. 1077]; *Commonwealth v. Berfield* (1947) 160 Pa.Super 438 [51 A.2d 523]; *Courtney v. Courtney* (1947) 251 Wis. 443 [29 N.W. 2d 759]; Anno. 54 ALR 2d 1422, 1436-1437.) Generally, the rationale of the foreign cases is to the effect that the exemption laws were enacted for the pur-

pose of giving protection not only to the employee or pensioner, but those dependent upon him, and that inasmuch as the exemption of an employee's earnings or pension is for the protection of the family, the wage-earner or pensioner should not be permitted to use the exemption statute as a shield against the very persons for whose benefit the exemption was created. (See *Mickenheim v. Cathcart* (1955) 228 La. 890 [84 So. 2d 449]; 54 ALR 2d 1418.) Nevertheless, with limited exceptions not applicable herein, it is the law of this forum that "... a judgment for alimony does not confer upon the judgment creditor thereunder a special status entitling her to seize assets otherwise exempt from execution. Notwithstanding a contrary position in other jurisdictions, California appears clearly to be one of those states in which the divorced wife, as the beneficiary of an alimony decree, has no status different than of other judgment creditors." *(Thomas v. Thomas, supra,* 192 Cal. App. 2d 771, 783-784; see *San Diego Trust & Savings Bank v. Heustis,* 121 Cal. App. 675, 688, 689; *Lisenbee v. Lisenbee,* 42 Cal. App. 567, 570.)

The California cases which permit the exemption of retirement funds carefully note that the exemption does not relieve the judgment debtor from his liability for support, nor does it affect other remedies available to the judgment creditor to enforce the duty to support. *(In re Smallbone, supra,* 16 Cal. 2d 532, 534; *Conaway v. Conaway,* 218 Cal. App. 2d 427, 429; *Howard v. Howard, supra,* 166 Cal. App. 2d 386, 389.) Thus, petitioner's claim that the exemption statute (Gov. Code, § 31452) represents a deprivation of property without due process of law in that the minor children are denied a basic and natural right of support is not persuasive, as the exemp-

tion of pension money from execution may not be construed to relieve a husband or father of his obligation to pay support money. (See *In re Smallbone, supra; Conaway v. Conaway, supra.)*

The judgment is affirmed.

(s) Kerrigan

J.

WE CONCUR:
McCABE, P.J.
TAMURA, J.

Certified for nonpublication, Rule 976:
McCABE, P.J.
KERRIGAN, J.
TAMURA, J.

APPENDIX III

FILED MAR 18 1966 W. E. ST JOHN, County Clerk
By REC Deputy

ENTERED IN BOOK JUDGMENTS No. 115 Page 269 Date MAR 21 1966

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

SUZANNE G. OGLE, Petitioner, vs. V. A. HEIM, etc., Respondent.

NO. 145165
JUDGMENT DENYING WRIT

The above entitled cause came on regularly for hearing in Department 19 of the above entitled Court on the 25th day of February, 1966, the Honorable WILLIAM S. LEE, Judge presiding, sitting without a jury, a jury having been expressly waived, ERIC A. ROSE appearing as attorney for petitioner, ADRIAN KUYPER, County Counsel, and WILLIAM J. McCOURT, Deputy County Counsel, by WILLIAM J. McCOURT, appearing for respondent, V. A. HEIM, and JOEL E. OGLE appearing in propria persona, and oral and documentary evidence having been introduced and the cause having been duly submitted for decision:

IT IS HEREBY ORDERED that the peremptory Writ is denied and the alternative Writ is discharged ([initialed by WSL])

Dated this 16 day of March, 1966.

Wm. S. Lee LBM
JUDGE OF THE SUPERIOR COURT

APPENDIX IV

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

WILLIAM L. MILLER,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY et al.,

Respondents;

VIRGINIA ANN MILLER,

Real Party in Interest

L.A. 29509
FILED
JULY 10, 1968
WILLIAM I. SULLIVAN, *Clerk*
By .....
S. F. Deputy

William L. Miller petitions for a writ of mandate to compel the Superior Court of Los Angeles County to vacate its order for the payment of alimony and child support from his pension.

Virginia Ann Miller filed an action for divorce against William in 1961. Virginia was awarded custody of their minor child and William was ordered to pay $300 per month as alimony and $150 per month as child support. William has remarried and left the state. He is a retired chief engineer of the Los Angeles Fire Department Receiving a pension of $1,352.90 per month. On April 24, 1967, following a hearing on an order to show cause and

a finding that William was in arrears in payments in excess of $3,500, the court ordered the Manager and Secretary of the Department of Pensions of the City of Los Angeles to remit pension moneys in the sum of $450 per month to Virginia for alimony and child support.

William contends that the trial court exceeded its jurisdiction in making the order directing payment to Virginia because his pension is exempt from execution and attachment under section 690.23 of the Code of Civil Procedure. Section 690.23 provides in pertinent part: "All money held, controlled or in process of distribution by the State or a city . . . derived from the contributions by the State or such city . . . or by any officer or employee thereof for retirement or pension purposes . . . are exempt from attachment or execution." We have held in Ogle v. Heim, ante, p. , that the statute means exactly what it says. William's pension is exempt. Virginia's argument that the *form* of the court's order places it without the ambit of prohibited attachment or execution is without merit. The *effect* of the order is plain. If this order does not contravene the exemption statute, then any creditor could circumvent any exemption by obtaining an order in comparable form.

The action of the court in creating an exception not found in the statute was error in excess of its jurisdiction. (Abelleira v. District Court of Appeal, 17 Cal. 2d 280, 291.) The court not only declined to follow rules established by courts of superior jurisdiction holding pensions exempt (In re Smallbone, 16 Cal. 2d 532; Howard v. Howard, 166 Cal.App.2d 386; Conaway v. Conaway, 218 Cal.App.2d 427), but failed to adhere to the exclusive procedure for reaching debts owed by government to third parties as set forth in Code of Civil Pro-

cedure section 710 (Wilson v. Walters, 19 Cal.2d 111; Dept. of Water & Power v. Inyo Chem. Co., 16 Cal.2d 744; Ott Hardware Co. v. Davis, 165 Cal. 795; Weiser v. Payne, 110 Cal.App. 378; Credit Bureau of San Diego v. Getty, 61 Cal.App.2d Supp. 823, 833). In refusing to follow binding precedent (Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450, 454) and procedures demanded by the code, the court exceeded its defined powers. (City & County of S.F. v. Superior Court, 53 Cal.2d 236, 244; Swycaffer v. Swycaffer, 44 Cal.2d 689, 693; H. J. Heinz Co. v. Superior Court, 42 Cal.2d 164, 173-175; Burtnett v. King, 33 Cal.2d 805, 807; Howard v. Superior Court, 25 Cal.2d 784, 789; 1 Witkin, Cal. Procedure, Jurisdiction, § 135 et seq., p. 397 et seq.)

Virginia contends that mandate should not issue because William has an adequate remedy by appeal. The Court of Appeal, however, decided that the remedy by appeal was inadequate when it issued the alternative writ, and, because no purpose but delay would be served by reviewing that decision, we may and do accept it for the purpose of this proceeding. (Weber v. Superior Court, 53 Cal.2d 403, 406; Atkinson v. Superior Court, 49 Cal. 2d 338, 342; Bowles v. Superior Court, 44 Cal.2d 574, 582.)

Let a peremptory writ of mandate issue as prayed.

PETERS, J.

WE CONCUR:
TRAYNOR, C.J.
McCOMB, J.
TOBRINER, J.
MOSK, J.
BURKE, J.
SULLIVAN, J.